

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>  <b>Q'Max America, Inc., et al<sup>1</sup></b>  <b>Debtors.</b>	§ § § § §	<b>Chapter 7</b>  <b>Case No. 20-60030-CML</b>  <b>Jointly Administered</b>
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**TRUSTEE'S MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR ENTRY OF  
AN ORDER APPROVING COMPROMISE AND SETTLEMENT WITH  
JIM HICKS & COMPANY, LLC**

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Pursuant to Bankruptcy Local Rule 9013:

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**PLEASE NOTE PURSUANT TO GENERAL ORDERS 2020-20, 2021-5, 2021-8, PARTIES MAY PARTICIPATE IN ELECTRONIC HEARINGS BY USE OF AN INTERNET CONNECTION. TO ACCESS THE HEARING, DIAL 1 (832) 917-1510. CONFERENCE CODE: 590153.**

**PARTIES MAY PARTICIPATE IN ELECTRONIC HEARINGS BY USE OF AN INTERNET CONNECTION. THE INTERNET SITE IS [HTTPS://WWW.GOTOMEET.ME/JUDGELOPEZ](https://www.gotomeet.me/judgelopez).**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**TO THE HONORABLE CHRISTOPHER M. LOPEZ, UNITED STATES BANKRUPTCY JUDGE:**

Christopher Murray, in his capacity as the duly appointed chapter 7 trustee ("Trustee") for

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification numbers are: Q'Max America Inc. (2319) and Anchor Drilling Fluids USA, LLC (5395).

the bankruptcy estates of Q'Max America, Inc. ("QAI") and Anchor Drilling Fluids USA, LLC ("Anchor") respectfully submits this *Trustee's Motion Pursuant to Bankruptcy Rule 9019 for Entry of an Order Approving Compromise and Settlement with Jim Hicks & Company, LLC*, ("Motion"), and in support hereof, respectfully states as follows:

**JURISDICTION, VENUE, AND CONSTITUTIONAL AUTHORITY**

1. The Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012–6 (S.D. Tex. May 24, 2012). This Motion is a core-proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. The statutory and procedural bases for the relief requested herein are 11 U.S.C. §§ 105(a) and 363(f) of the Bankruptcy Code,<sup>2</sup> Rules 2002, 6004, and 9019 of the Federal Rules of Bankruptcy Procedure,<sup>3</sup> and Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas ("BLR").

3. Venue is proper in pursuant to 28 U.S.C. §§ 1408 and 1409. The Trustee confirms his consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by this Court with respect to this Motion. Requests for authority to compromise disputes under Rule 9019 have no equivalent in state law, thereby rendering the Supreme Court's opinion in *Stern v. Marshall* inapplicable.<sup>4</sup> In the alternative, a request for authority to compromise under Rule 9019 is an essential bankruptcy matter, triggering the "public rights" exception.<sup>5</sup>

**PRELIMINARY STATEMENT: SUMMARY OF SETTLEMENT**

4. Trustee has reached a settlement with Jim Hicks & Company, LLC ("Jim Hicks").

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<sup>2</sup> Any reference to "Code" or "Bankruptcy Code" is a reference to Title 11 of the United States Code, and any reference to "Section" or "§" refers to the corresponding section in Title 11, unless stated otherwise.

<sup>3</sup> Any reference to "Rules" or "Bankruptcy Rules" is a reference to the Federal Rules of Bankruptcy Procedure, unless stated otherwise.

<sup>4</sup> See *In re Carlew*, 469 B.R. 666, 672 (Bankr. S.D. Tex. 2012) (discussing *Stern v. Marshall*, 564 U.S. 462 (2011)).

<sup>5</sup> See *id.*

The factual recitations in this Motion are solely those of the Trustee and are not adopted by Jim Hicks.

5. Trustee asserts that certain transfers in an amount not less than \$190,539.33 made to Jim Hicks by Debtor Anchor are avoidable pursuant to section 547 of the Code.

6. The Trustee has conferred with counsel, reviewed the information provided by Jim Hicks, and negotiated resolution of his claim at arm's length. The Trustee seeks authority to settle all claims between the parties for payment from Jim Hicks to the estate of Debtor Anchor in the amount of \$10,000.00 ("Settlement Amount"). The Trustee, in his business judgment, and in light of the substantial risk of litigation for claims of this nature, has determined the proposed settlement is fair, reasonable, and in the best interest of the Anchor estate and its creditors.

### **RELEVANT BACKGROUND<sup>6</sup>**

#### **A. THE CHAPTER 7 CASES**

7. On May 24, 2020 ("Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code, commencing the jointly administered Cases.

8. On May 24, 2020, the United States Trustee appointed the Trustee.

9. On May 19, 2022, Trustee filed suit in this court, adversary proceeding number 22-06012, seeking to recover transfers, made to Jim Hicks by Debtor Anchor, pursuant to Section 547 and of the Code.

10. Trustee asserts that certain avoidable transfers, in an amount not less than \$190,539.33, were made to Jim Hicks, which transfers are recoverable under section 547 of

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<sup>6</sup> The recitals are solely those of the Trustee and not necessarily adopted by Jim Hicks.

the Code.

11. Trustee, with the consent of Jim Hicks, files this Motion and requests, pursuant to Bankruptcy Rule 9019, approval of the parties' compromise and authority for Trustee to enter into the Settlement Agreement attached as **Exhibit A** ("Settlement Agreement").

**B. BENEFITS OF RESOLUTION**

12. Resolution of the dispute with Jim Hicks will benefit the estates by reducing the overall cost and expenses associated with potential litigation. Litigation with Jim Hicks would likely be expensive relative to the amount in dispute. The proposed settlement is in the best interest of the Debtors' estates. Trustee requests entry of an Order approving the Settlement Agreement.

**RELIEF REQUESTED AND SUPPORTING AUTHORITY**

**A. THE COMPROMISE UNDER RULE 9019**

13. Pursuant to the foregoing, by and through this Motion, Trustee respectfully requests the entry of an order approving the Settlement Agreement and authorizing the Parties to take any and all necessary and appropriate actions necessary to consummate it.

14. The Fifth Circuit has supplemented the provisions of Bankruptcy Rule 9019 to require, as a condition to approval of a settlement, that the settlement is "fair and equitable and in the best interest of the estate."<sup>7</sup>

15. To aid in such assessment, the Fifth Circuit has further instructed courts to consider the following three factors:

- a. The probability of success in the litigation, with due consideration for the uncertainty in fact and law;
- b. The complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay; and

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<sup>7</sup> *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F. 2d 599, 602 (5<sup>th</sup> Cir. 1980); *see also Connecticut General Life Ins. Co. v. United Companies Fin. Corp (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5<sup>th</sup> Cir. 1995).

c. All other factors bearing on the wisdom of the compromise.<sup>8</sup>

16. Probability of Success. In relation to the probability of success in the litigation, courts have held that it is unnecessary to conduct a mini-trial on the various claims and defenses to be resolved under the settlement. “The judge need only apprise himself of the relevant facts and law so that he can make an informed and intelligent decision.”<sup>9</sup> Trustee believes the probability of success in pursuing an objection to amounts relating to preferences are high but would require discovery. The litigation could also prove costly, potentially requiring the retention of experts.

17. Complexity, Duration, and Expense. In relation to the complexity, duration, expense, and delay of the litigation factor, a duty exists “to conserve the assets of the estate to the extent possible where . . . there are finite assets available to fund the cost of litigation.”<sup>10</sup> As explained by the Fifth Circuit, “compromises are a normal part of the process of reorganization, oftentimes desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated and costly.”<sup>11</sup> As explained above, the cost to pursue Trustees claims is not in line with the requisite benefit. Trustee estimates that attorneys’ fees and other expenses would likely be in excess of the amount in controversy.

18. Finally, as for all other factors bearing on the wisdom of the compromise, at least two other factors are utilized in this Circuit: (a) the best interests of the creditors, with proper

<sup>8</sup> *Foster Mortgage Corp.*, 68 F.3d at 917.

<sup>9</sup> *Official Committee of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 356 (5th Cir. 1997) (quoting *La Salle Nat’l Bank v. Holland (In re American Reserve Corp.)*, 841 F.2d 159, 163 (7th Cir. 1987)).

<sup>10</sup> *Monus v. Lambros*, 286 B.R. 629, 638 (N.D. Ohio 2002), *aff’d*, 63 Fed. App’x 215 (6th Cir. 2003) (quoting *In re Lee Way Holding Co.*, 120 B.R. 881, 890 (Bankr. S.D. Ohio 1990)).

<sup>11</sup> *Cajun Elec.*, 119 F.3d at 354 (quoting *Jackson Brewing Co.*, 624 F.2d at 602).

deference to their reasonable views; and (b) the extent to which the settlement is truly the product of arms-length bargaining, and not fraud or collusion.<sup>12</sup>

19. Trustee, in exercise of his sound business judgment, has determined the Settlement Agreement is supported by each of the above factors, and is, therefore, fair and equitable and in the best interests of the Debtor, its bankruptcy estate, and its creditors.

20. As summarized above and set forth more fully in the Settlement Agreement, Jim Hicks and Trustee reached an agreement that resolves their dispute. The settlement thus eliminates future costs and uncertainties of litigation, resolves any and all claims between the parties, and thus directly benefits Debtor Anchor's creditors. Moreover, there is inherent uncertainty with respect to the final outcome of any litigation.

21. The proposed Settlement Agreement is the product of arms-length negotiations between unrelated parties in adversarial postures. Accordingly, Trustee submits that the parties' good faith in proposing same to this Court is unassailable.

22. Considering the foregoing, Trustee reasonably believes the proposed Settlement Agreement is fair and equitable and in the best interests of the Anchor estate. Accordingly, Trustee requests the Settlement Agreement be approved by the Court pursuant to Bankruptcy Rule 9019.

WHEREFORE, Trustee respectfully requests this Court enter an Order: (i) granting this Motion; (ii) approving and authorizing Trustee, on behalf of Debtors, to enter into the Settlement Agreement, in the form attached hereto; and (iii) granting Trustee such other and further relief to which it may be justly entitled.

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<sup>12</sup> See *Cajun Elec.*, 119 F.3d at 356, 358; see also *Foster Mortgage Corp.*, 68 F.3d at 917.

Dated: September 22, 2022

Respectfully submitted,

**MCDOWELL HETHERINGTON LLP**

By: /s/ Nicholas R. Lawson  
Nicholas R. Lawson  
Texas Bar No. 24083367  
Avi Moshenberg  
Texas Bar No. 24083532  
Matthew Caldwell  
Texas Bar No. 24107722  
McDowell Hetherington LLP  
1001 Fannin Street, Suite 2700  
Houston, TX 77002  
P: 713-337-5580  
F: 713-337-8850  
E: [Nick.Lawson@mhlhp.com](mailto:Nick.Lawson@mhlhp.com)  
[Avi.Moshenberg@mhlhp.com](mailto:Avi.Moshenberg@mhlhp.com)  
[Matthew.Caldwell@mhlhp.com](mailto:Matthew.Caldwell@mhlhp.com)

***COUNSEL FOR CHRISTOPHER R. MURRAY,  
CHAPTER 7 TRUSTEE***

**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 22, 2022, a true and correct copy of the foregoing Notice was served electronically on all parties registered to receive electronic notice of filings in this case via this Court's ECF notification system and by first class mail via the attached service list.

/s/ Nicholas R. Lawson  
Nicholas R. Lawson

**MASTER SERVICE LIST**

**DEBTORS:**

Q'MAX AMERICA, INC.  
11700 KATY FWY., SUITE 200  
HOUSTON, TX 77079

ANCHOR DRILLING FLUIDS USA, LLC  
11700 KATY FWY., SUITE 200  
HOUSTON, TX 77079

**REPRESENTED BY:**

JOHN F HIGGINS, IV  
PORTER HEDGES LLP  
1000 MAIN, SUITE 3600  
HOUSTON, TX 77002-6336

**TRUSTEE:**

CHRISTOPHER R MURRAY  
JONES MURRAY & BEATTY LLP  
4119 MONTROSE BOULEVARD  
SUITE 230  
HOUSTON, TX 77006

**REPRESENTED BY:**

JARROD B. MARTIN  
CHAMBERLAIN HRDLICKA  
1200 SMITH STREET, SUITE 1400  
HOUSTON, TX 77002

***U.S. TRUSTEE***

US TRUSTEE  
OFFICE OF THE US TRUSTEE  
515 RUSK, SUITE 3516  
HOUSTON, TX 77002

**TOP TWENTY CREDITORS**

---

CIMBAR WV  
ATTENTION: STACY TOMBLIN  
49-0 JACKSON LAKE ROAD  
CHATSWORTH, GA 30705

BAKER HUGHES  
ATTENTION: WILLIAM RAY  
PO BOX 301057  
DALLAS, TX 75303

IEP MINERALS, LLC  
ATTENTION: DIEGO GONZALEZ  
101 NORTH VAL VERDE RD  
DONNA, TX 78537

ROYAL LOGISTICS  
ATTENTION: MARTIN BENAVIDES  
C/O CORNERSTONE FUNDING  
24 SMITH ROAD  
MIDLAND, TX 79705

INGEVITY CORPORATION  
ATTENTION: JAMES KLEIN  
PO BOX 743657  
ATLANTA, GA 30374

TIGER CALCIUM, INC  
ATTENTION: GARY MAHURA  
603 15TH AVE  
NISKU, AB T9E 7M6

AGRI-EMPRESA, LLC  
ATTENTION: ERIC TABB  
6001 WEST INDUSTRIAL  
MIDLAND, TX 79706

HILL BROTHERS CHEMICAL A  
ATTENTION: LISA COSIO  
1675 N MAIN STREET  
ORANGE, CA 92867

CIMBAR PERFORMANCE MINERALS  
49-0 JACKSON LAKE ROAD  
CHATSWORTH, GA 30705



FEDERAL WHOLESALE DRIG MUD  
ATTENTION: DON BURELL  
PO BOX 732135  
DALLAS, TX 75373

ELEMENTIS SPECIALTIES, INC  
ATTENTION: TIMOTHY STUPAK  
1577 MOMENTUM PLACE  
CHICAGO, IL 60689

EXCALIBAR MINERALS LLC  
ATTENTION: MARK BROOKS  
PO BOX 973693  
DALLAS, TX 75397

JOSEPH'S ENERGY, LLC  
ATTENTION: ALLISON WETZEL  
170 BROADWAY STREET  
IRONDALE, OH 43932

UV LOGISTICS  
ATTENTION: KEN DOSS  
PO BOX 975357  
DALLAS, TX 75397

CHEMSOL, LLC  
601 CARLSON PKWY #400  
HOPKINS, MN 55305

HSBC BANK CANADA  
PO BOX 4283 PT STN A;  
C/O TH1057U  
TORONTO, ON M5W 5W6

AMERICAN REFINING GROUP, INC  
ATTENTION: ED PATRICK  
PO BOX 644811  
PITTSBURGH, PA 15264

CHESAPEAKE ENERGY CORPORATION  
ATTENTION: CHRISTINA KEIM  
P.O. BOX 18496  
OKLAHOMA CITY, OK 73154

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON  
ATTENTION: NEIL GOLDMAN  
1285 AVENUE OF THE AMERICAS  
NEW YORK, NY 10019

PRICEWATERHOUSECOOPERS LLP  
ATTENTION: MICHAEL SALAZAR-MEDINA  
PO BOX 952282  
DALLAS, TX 75395-2282

MYERS WELL SERVICE INC  
ATTENTION: VINCE AZZOLINA  
2001 BALLPARK COURT  
EXPORT, PA 15632

BRI-CHEM SUPPLY CORP  
ATTENTION: JASON THEISS  
DEPT 3064  
DALLAS, TX 75312

#### **INTERNAL REVENUE SERVICE**

---

INTERNAL REVENUE SERVICE  
1919 SMITH ST  
STOP 5022HOU  
HOUSTON, TX 77002

IRS – SPECIAL PROCEDURES II  
1919 SMITH STREET, STOP 5025HOU  
HOUSTON, TX 77002

IRS – U.S. ATTORNEY  
1000 LOUISIANA STREET, SUITE 2300  
HOUSTON, TX 77002-5010

IRS – U.S. ATTORNEY GENERAL  
10<sup>TH</sup> & CONSTITUTION, NW  
WASHINGTON, DC 20530-0001

INTERNAL REVENUE SERVICE  
PO BOX 7346  
PHILADELPHIA, PA 19101-7346

**OFFICE OF THE ATTORNEY GENERAL OF TEXAS**

---

OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
BANKRUPTCY & COLLECTIONS DIVISION  
P. O. BOX 12548- MC 008  
AUSTIN, TEXAS 78711-2548

**PARTIES REQUESTING NOTICE**

---

COUNSEL FOR HSBC  
LOUIS R. STRUBECK, JR.  
NORTON ROSE FULBRIGHT LLP  
2200 ROSS AVENUE  
DALLAS, TEXAS 75201-7932

COUNSEL FOR ENCINA  
KYUNG S LEE  
KYUNG S LEE PLLC  
909 FANNIN, SUITE 3700  
HOUSTON, TX 77010

JAMES KATCHADURIAN  
450 LEXINGTON AVENUE  
4TH FLOOR  
NEW YORK, NY 10017

JAMES KATCHADURIAN  
4801 WOODWAY DRIVE  
SUITE 300 EAST  
HOUSTON, TX 77056

COUNSEL FOR ROYAL LOGISTICS  
KELLY, MORGAN, DENNIS, CORZINE &  
HANSEN, P.C.  
PO BOX 1311  
ODESSA, TX 79760-1311

DON STECKER  
LINEBARGER GOGGAN BLAIR & SAMPSON,  
LLP  
112 E. PECAN STREET, SUITE 2200  
SAN ANTONIO, TX 78205

THOMAS W. SANKEY  
DUANE MORRIS LLP  
1330 POST OAK BOULEVARD  
SUITE 800  
HOUSTON, TX 77056-3166

CAMERON J. ASBY  
DUANE MORRIS LLP  
1330 POST OAK BOULEVARD  
SUITE 800  
HOUSTON, TX 77056-3166

JOEL M. WALKER  
DUANE MORRIS LLP  
600 GRANT STREET, SUITE 5010  
PITTSBURG, PA 15219-2802

RICHARD A. AGUILAR  
MCGLINCHEY STAFFORD, PLLC  
601 POYDRAS STREET, 12<sup>TH</sup> FLOOR  
NEW ORLEANS, LA 70130

RUDY J. CERONE, ESQ.  
MCGLINCHEY STAFFORD, PLLC  
601 POYDRAS STREET, 12TH FLOOR  
NEW ORLEANS, LA 70130

MARK J. CHANEY, III, ESQ.  
MCGLINCHEY STAFFORD, PLLC  
601 POYDRAS STREET, 12TH FLOOR  
NEW ORLEANS, LA 70130

MATTHEW HINKER  
O'MELVENY & MYERS LLP  
TIMES SQUARE TOWER  
7 TIMES SQUARE

NANCY MITCHELL  
O'MELVENY & MYERS LLP  
TIMES SQUARE TOWER  
7 TIMES SQUARE  
NEW YORK, NEW YORK 10036

TOM A. HOWLEY  
HOWLEY LAW PLLC  
PENNZOIL PLACE – SOUTH TOWER  
711 LOUISIANA ST., SUITE 1850  
HOUSTON, TEXAS 77002

ERIC TERRY  
HOWLEY LAW PLLC  
PENNZOIL PLACE – SOUTH TOWER  
711 LOUISIANA ST., SUITE 1850  
HOUSTON, TEXAS 77002

KYUNG S. LEE PLLC  
KYUNG S. LEE  
4723 OAKSHIRE DRIVE, APT. B  
HOUSTON, TEXAS 77027

DONALD E. ROTHMAN  
RIEMER & BRAUNSTEIN LLP  
100 CAMBRIDGE STREET, 22ND FLOOR  
BOSTON, MASSACHUSETTS 02114-2527

BRENDAN C. RECUPERO  
RIEMER & BRAUNSTEIN LLP  
100 CAMBRIDGE STREET, 22ND FLOOR  
BOSTON, MASSACHUSETTS 02114-2527

LOUIS R. STRUBECK, JR.  
NORTON ROSE FULBRIGHT US LLP  
2200 ROSS AVENUE, SUITE 3600  
DALLAS, TEXAS 75201-7932

HOWARD GORMAN QC  
NORTON ROSE FULBRIGHT CANADA LLP  
400 3RD AVENUE SW, SUITE 3700  
CALGARY ALBERTA T2P 4H2 CANADA

JULIE GOODRICH HARRISON  
NORTON ROSE FULBRIGHT US LLP 1301  
MCKINNEY STREET, SUITE 5100  
HOUSTON, TEXAS 77010-3095

TIMOTHY A. MILLION  
HUSCH BLACKWELL LLP  
600 TRAVIS ST., SUITE 2350  
HOUSTON TX 77002

ALEX TERRAS  
HUSCH BLACKWELL LLP  
120 SOUTH RIVERSIDE PLAZA, SUITE 2200  
CHICAGO, IL 60606

MICHAEL URYASZ  
GREAK, URYASZ & BRUENING, P.C.  
8008 SLIDE ROAD, SUITE 30  
LUBBOCK, TEXAS 79424-2828

KENNETH P GREEN  
SNOW SPENCE GREEN LLP  
2929 ALLEN PARKWAY, SUITE 2800  
HOUSTON, TX 77019

AMBER L. JAMES  
JAMES FIRM, PLLC  
1316 5TH AVENUE  
FORT WORTH, TEXAS 76104

DANIELLE MASHBURN-MYRICK  
PHELPS DUNBAR LLP  
101 DAUPHIN STREET, SUITE 1000  
P.O. BOX 2727  
MOBILE, AL 36652

KIRAN A. PHANSALKAR  
CONNER & WINTERS, LLP  
1700 ONE LEADERSHIP SQUARE  
211 N. ROBINSON AVE.  
OKLAHOMA CITY, OK 73102

RAFAEL DIAZ-GRANADOS, PRESIDENT & CEO  
Q'MAX AMERICA, INC. AND ANCHOR  
DRILLING FLUIDS USA, LLC  
11700 KATY FREEWAY, SUITE 200  
HOUSTON, TX 77079

ERIC GLOVER, CHIEF FINANCIAL OFFICER  
Q'MAX AMERICA, INC. AND ANCHOR  
DRILLING FLUIDS USA, LLC  
11700 KATY FREEWAY, SUITE 200  
HOUSTON, TX 77079

CELINA CARTER, GENERAL COUNSEL  
Q'MAX AMERICA, INC. AND ANCHOR  
DRILLING FLUIDS USA, LLC  
11700 KATY FREEWAY, SUITE 200  
HOUSTON, TX 77079

MARK E. GOLMAN  
3710 RAWLINS STREET, SUITE 1420  
DALLAS, TX 75219

THERESA MOBLEY  
CAGE, HILL & NIEHAUS, L.L.P.  
5851 SAN FELIPE, SUITE 950  
HOUSTON, TEXAS 77057

JOSEPH M. HILL  
CAGE, HILL & NIEHAUS, L.L.P.  
5851 SAN FELIPE, SUITE 950  
HOUSTON, TEXAS 77057

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP  
ATTENTION: DIANE W. SANDERS  
PO BOX 17428  
AUSTIN, TX 78760-7428

RICHARD D. SCHELL  
LAW OFFICES OF RICHARD D. SCHELL  
1801 S. 2ND ST., SUITE 460  
MCALLEN, TX 78503

STEVENS & LEE, P.C.  
ATTN: CONSTANTINE D. POURAKIS  
485 MADISON AVENUE, 20TH FLOOR  
NEW YORK, NEW YORK 10022

JONATHAN S. HAWKINS  
THOMPSON HINE LLP  
DISCOVERY PLACE  
10050 INNOVATION DR. #400  
MIAMISBURG, OH 45432

STEPHANIE BRAVIERI  
BRENNAN STEIL S.C.  
1 E MILWAUKEE STREET  
JANESVILLE, WI 53545

CHRYSANTHE E. VASSILES  
BLACK, MCCUSKEY, SOUERS & ARBAUGH, LPA  
220 MARKET AVE., SOUTH, SUITE 1000  
CANTON, OH 44702

TARA L. GRUNDEMEIER  
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP  
PO BOX 3064  
HOUSTON, TX 77253-3064

LARRY CHEK  
PALMER LEHMAN SANDBERG, PLLC  
8350 N. CENTRAL EXPRESSWAY, SUITE 1111  
DALLAS, TEXAS 75206

ARTHUR M. STANDISH  
STEPTOE & JOHNSON PLLC  
1780 HUGHES LANDING BLVD. SUITE 750  
THE WOODLANDS, TX 77380

AARON M. GUERRERO  
SNOW SPENCE GREEN LLP  
2929 ALLEN PARKWAY, SUITE 2800  
HOUSTON, TX 77019

CHAD S. CABY  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
1200 17TH STREET, SUITE 3000  
DENVER, CO 80202

DEMETRI J. ECONOMOU  
KANE RUSSELL COLEMAN LOGAN PC  
5051 WESTHEIMER ROAD, SUITE 1000  
HOUSTON, TEXAS 77056  
ERIC M. VAN HORN  
SPENCER FANE LLP  
2200 ROSS AVENUE, SUITE 4800  
WEST DALLAS, TX 75201

MCCREARY, VESELKA, BRAGG & ALLEN, P.C.  
TARA LEDAY  
P.O. BOX 1269  
ROUND ROCK, TEXAS 78680

LAURA J. MONROE  
PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.  
P.O. BOX 817  
LUBBOCK, TX 79408

MELISSA E. VALDEZ  
PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.  
1235 NORTH LOOP WEST, SUITE 600  
HOUSTON, TX 77008

AMEY L. VOGEL  
JOSH ROHE  
BANK OF AMERICA PLAZA  
901 MAIN STREET, SUITE 610  
DALLAS, TX 75202

SHELLEY BUSH MARMON  
CRADY JEWETT MCCULLEY & HOUREN LLP  
2727 ALLEN PARKWAY, SUITE 1700  
HOUSTON, TEXAS 77019